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3 **UNITED STATES DISTRICT COURT**
4 **NORTHERN DISTRICT OF CALIFORNIA**
5 **SAN FRANCISCO DIVISION**

6 CENTER FOR BIOLOGICAL DIVERSITY, a
7 non-profit corporation; SIERRA CLUB, a non-
8 profit corporation; and PUBLIC EMPLOYEES
9 FOR ENVIRONMENTAL
10 RESPONSIBILITY, a non-profit corporation,

11 Plaintiffs,

12 v.

13 BUREAU OF LAND MANAGEMENT

14 Defendant,

15 and,

16 DESERT VIPERS MOTORCYCLE CLUB,
17 SAN DIEGO OFF-ROAD COALITION,
18 CALIFORNIA ASSOCIATION OF 4-
19 WHEEL DRIVE CLUBS, and THE BLUE
20 RIBBON COALITION

21 Defendant-Intervenors

Case No: C-00-0927 WHA (JCS)

**STIPULATION AND
PROPOSED ORDER TO AMEND
PRIOR STIPULATIONS**

22 WHEREAS, on January 31, 2002, hearing was held on Federal Defendants' Rule 60(b)
23 Motion for Partial Relief from Order and Judgment which sought relief from certain deadlines
24 for action to be taken by the Federal Defendant, the Bureau of Land Management ("BLM"), that
25 were contained in two of the Stipulations previously approved as a Consent Decree by this
26 Court; and

27 WHEREAS, at the hearing on January 31, 2002, this Court entered the parties' proffered
28 Stipulation and Proposed Order, after ascertaining that there were no objections, approving
amendments to the two Stipulations previously approved by this Court. In sum, the January 31
Order extended the deadlines by four weeks, so that the parties could continue to negotiate
further proposed amendment to the previously approved Stipulations; and

1 WHEREAS, the parties have been able to reach agreement on proposed amendments to
2 the previously approved Stipulations, with the caveat that the Defendant-Intervenor's
3 concurrence is limited as noted on Defendant-Intervenor's signature page;

4 THEREFORE, the parties agree as follows:

5 The Stipulations previously approved by this Court as a Consent Decree are amended in
6 the following respects:

7 1. BLM agrees that the interim measures identified in the five stipulated agreements
8 which occur within the relevant planning areas, i.e., NEMO, NECO, Coachella Valley, Western
9 Colorado, West Mojave, and the Imperial Sand Dunes RAMP, will be extended and will not
10 expire until the Record of Decision is signed for each relevant amendment, with the following
11 exceptions: Stipulation #5, provision 9 (D) (Carbonate Endemics), provision #16 (the Round
12 Mountain Allotment), provision 22 (C) (grazing allotments and the Southwestern willow
13 flycatcher and Least Bell's vireo), and provision 33 (mining plans). The measures in
14 paragraphs 16 and 33 remain unchanged and expire upon receipt of the last biological opinion on
15 the effects of the CDCA Plan. Paragraph 9 (D) will expire upon signing the Decision Record for
16 the Carbonate Habitat Management Strategy. Paragraph 22 (C) will expire upon the receipt of a
17 site specific biological opinion, if any is required for the allotment in question.

18 2. The BLM will terminate consultation on the effects of the CDCA Plan which was
19 initiated on January 30, 2002 and the parties agree that the consultation on the CDCA plans as
20 proposed to be amended by the NEMO and NECO plan amendments is sufficient to meet the
21 requirement of plan-wide consultation as originally required by Stipulation #1, provision #3 and
22 the January 31, 2002 amendment to Stipulation #1, provision #3, at paragraph 2. Stipulation #1,
23 provision #3 is struck.

24 3. Paragraph 2j(3) of the Stipulation and Order Concerning Livestock Grazing in Desert
25 Tortoise Habitat is amended to read as follows:

26 j. Shall not authorize grazing in 265,041 acres of
27 tortoise critical habitat from March 1 through June 15 and from September 7
through November 7 in the following five allotments:

(1)	Cronese Lake	18,000 acres
(2)	Harper Dry Lake	16,482 acres
(3)	Ord Mountain	33,660 acres
(4)	Valley Wells	88,879 acres

1 (5) Lazy Daisy 108,020 acres
2 [Balance of paragraph remains the same]

3 4. Paragraph 2k of the Stipulation and Order Concerning Livestock Grazing in Desert
4 Tortoise Habitat is amended to read as follows:

5 k. Shall not authorize grazing in 46,823 acres of tortoise habitat (non-
6 critical) in the following three allotments:

7 (1)	Lacy-Cactus-McCloud	18,000 acres
(2)	Tunawee Common	1,800 acres
(3)	Hansen Common	3,500 acres
(4)	Ord Mountain	23,523 acres

8 [Balance of paragraph remains the same]

9
10 5. Paragraph 32 of the Stipulation on All Further Injunctive Relief is amended as
11 follows: BLM will issue a Record of Decision regarding route designation in NECO, NEMO
12 desert tortoise DWMAs, and the Coachella Valley by December 31, 2002. BLM will issue a
13 Record of Decision regarding route designations in the Western Colorado plan area by January
14 31, 2003, and the West Mojave plan area by June 30, 2003, and all remaining areas in the CDCA
15 by June 30, 2004.

16 6. The Revised Stipulation and Proposed Order Concerning Injunctive Relief for the
17 Peninsular Ranges Bighorn Sheep is amended in the following respects:

18 a) Under 16(f)(5) strike “by a chain” and insert “by a protective lock box”.

19 b) Under 16 (h) (10) add “BLM will provide to Plaintiffs a report of all instances of
20 locks, fences or gates broken, repaired or replaced”.

21 c) Under 16 (j) add the sentence “ These entities may be provided keys to carry out such
22 research, inventory and monitoring activities”.

23 d) Under 16 (k) add “BLM may remove the middle traffic counter. BLM will access and
24 check the northern traffic counter on foot. BLM will access and check the southern traffic
25 counter by entering and exiting the Dunn Road from the south”.

26 e) Add paragraph 16(l). “In order to avoid disturbance to bighorn sheep movement
27 corridor(s) and parturition area(s), BLM rangers and sheep ambassadors shall avoid driving
28 vehicles north of the divide between Magnesia Canyon and Cathedral Canyon. Occasional

1 monitoring of this area should be undertaken on foot and with the use of binoculars. In non-
2 emergency situations BLM should only access the Dunn Road from the south”.

3 The parties agree that the following additional provisions will become part of the five
4 Stipulations previously approved by this Court as a Consent Decree:

5 7. BLM agrees to close and rehabilitate unauthorized routes in the Western Colorado
6 plan area that have been identified by BLM for closure. The process will begin in March 2002
7 and will be completed within 20 workable months (work season of October through April, due to
8 the extreme heat) dependent on the availability of funding to fully implement the project. BLM
9 will pursue all avenues legally available to it to procure funding to complete this activity within
10 the designated timeframe, including seeking grants from the State of California Off-highway
11 Vehicle Commission.

12 8. BLM agrees to initiate a meeting with Plaintiffs and the Forest Service concerning
13 the future of roads to and in Furnace and Birch Creek. BLM agrees to commit to monitoring to
14 ensure that no adverse impacts to riparian resources occur as a result of vehicle access from
15 BLM lands. If adverse effects are detected, the BLM will take appropriate protective actions,
16 which may include, but are not limited to, the installation of additional fencing or the closure of
17 routes.

18 9. BLM agrees to monitor the effectiveness of the current fencing in the Death Valley
19 Junction area to determine if the fencing is adequate to protect listed plants in the area. If
20 adverse effects are detected, the BLM will, after notification of the Plaintiffs and CNPS, take
21 appropriate protective actions, which may include, but are not limited to, the installation of
22 additional fencing or the closure of routes. BLM will consider and analyze the proposal
23 submitted by the Plaintiffs and CNPS for an expanded ACEC in the FEIS for NEMO.

24 10. BLM will ensure that vehicle barriers are placed and maintained at least 200 yards
25 from Nadeau Springs and Austin Springs in the Great Falls Basin ACEC.

26 11. BLM agrees to identify the following routes as “redundant” and therefore subject to
27 closure in the Final NECO Plan and FEIS: (a) 660292 (identified as SR216 in the Chuckwalla
28 Bench ACEC Management Plan and Environmental Assessment, approved March 3, 1986); and
(b) 660291 (partial) from its intersection with 660289 to its intersection with 660290 (identified

as SR217 in the Chuckwalla Bench ACEC Management Plan and Environmental Assessment, approved March 3, 1986).

12. BLM will close and sign all routes within the Western Rand ACEC by March 30, 2002 pursuant to the Rand Mountain-Fremont Valley Biological Opinion (1-6-90F 54R). BLM will block major access points needing a physical barrier by September 30, 2002. The closure will not affect administratively approved travel by BLM and its volunteer agents and contractors conducting associated habitat restoration and rehabilitation and other administrative work. The closure will remain in effect until the West Mojave Plan's Record of Decision is signed.

13. BLM agrees to install post and cable fencing and /or other most appropriate and effective physical barriers in the Amargosa Canyon to prevent vehicle trespass from the Sperry Wash OHV trail by April 1, 2002.

14. BLM agrees to prepare a written analysis of the Coachella Valley milkvetch and its occurrence relative to routes of travel in the vicinity of Desert Center by May 31, 2002. The report would include information on habitat characteristics, known surveys conducted or botanical visitation, and general vehicle use information and will be made available in draft form for input and comment from the CBD and CNPS prior to finalization. If the report indicates the potential for adverse effects to plants or plant habitat, the BLM will take appropriate protective actions, which may include, but are not limited to, the installation of additional fencing or the closure of routes. The report would also be used in support of information already provided in the NECO plan in preparing the FEIS and Record of Decision.

[*see note at end of document] 15. If the Coachella Valley Multiple Species Habitat Conservation Plan Amendment (CVMSHCP) is not completed by December 31, 2002, BLM will close/barricade by January 1, 2003 all known access onto the Dunn Road. In the interim, until a Record of Decision for the plan is signed, BLM will, by April 1, 2002, install and maintain signs on all known roads providing access to the Dunn Road that indicate that access to the Dunn Road is prohibited. These signs will indicate "Unauthorized vehicle access prohibited ____ miles ahead". BLM will consider the closure and gating of all access roads to the Dunn Road in the alternatives considered in the CVMSHCP. For purposes of this paragraph only the parties agree that the Dunn Road is the road as described in the Federal Register of 08/28/00 (65 FR 52126).

1 16. BLM would agree to install a barrier fence along or adjacent to the eastern edge of
2 the Santa Rosa Wilderness by September 30, 2002 where appropriate to prevent motorized-
3 vehicle intrusions into wilderness portions of Devil Canyon/Guadalupe Creek. The fence would
4 not preclude access by hikers and equestrians.

5 17. BLM will make every effort to monitor all closures implemented under the consent
6 decree, including Windy Point, to the full extent of its staffing and law enforcement patrol
7 capabilities. As a part of doing so, BLM will review and update law enforcement patrol plans to
8 ensure such plans are addressing the objective of increasing the frequency of patrol of closed
9 areas. BLM agrees to promptly investigate reports of noncompliance in closure areas and take
10 appropriate steps to deter the re-occurrence of such activities, including as appropriate, increased
11 patrol frequency. BLM will promptly replace/repair signs, gates and barriers, and take other
12 actions that will contribute to compliance with the closures. BLM will provide the CBD a brief
13 written summary monthly of the efforts made to increase patrols, an indication of compliance
14 from those patrols, actions taken to enhance compliance, and a summary of actions taken to
15 respond to specific reports of noncompliance areas.

16 18. In complying with the terms of this agreement, BLM shall be subject to all
17 applicable federal statutes or regulations, and nothing in this agreement shall be construed to
18 require BLM to take any actions in contravention of any such applicable statutes or regulations.

19 19. Any interim measure that BLM has agreed to take pursuant to this agreement shall
20 not be deemed a requirement of any subsequently issued biological opinion, Record of Decision,
21 or other decision record , unless such measure is incorporated by FWS into one or more
22 biological opinion(s) resulting from consultation on effects of the CDCA on listed species, or
23 incorporated by the BLM through its decision making process.

24 20. The parties agree that this Stipulation is effective upon its signature as an agreement
25 among the signatories unless the Court orders to the contrary, and is effective as an Order of the
26 Court upon its approval and entry by the Court.

27 Its is so stipulated by the Parties.
28

**FOR PLAINTIFFS CENTER FOR
BIOLOGICAL DIVERSITY; SIERRA CLUB
AND PUBLIC EMPLOYEES FOR
ENVIRONMENTAL RESPONSIBILITY**

Dated: _____

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2 Note: Defendant-Intervenors participated in negotiations and understand Plaintiffs
3 and BLM have agreed to the above-stated terms. Defendant-Intervenors do not join in
4 this agreement but understand that BLM will proceed to implement its terms should the
5 agreement be approved by the Court, provided that, Defendant-Intervenors expressly
6 reserve the right to challenge BLM management actions, including those implemented
7 under this agreement, through appropriate administrative and/or judicial proceedings.
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12 **FOR DEFENDANT-INTERVENORS DESERT VIPERS MOTORCYCLE**
13 **CLUB, SAN DIEGO OFF-ROAD COALITION; CALIFORNIA**
14 **ASSOCIATION OF 4-WHEEL DRIVE CLUBS, AND THE BLUE RIBBON**
15 **COALITION**
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Dated: _____

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3 PURSUANT TO THE STIPULATION, IT IS SO ORDERED.
4

5 DATED the ____ day of _____, 2002.
6
7

8 WILLIAM ALSUP
9 UNITED STATES DISTRICT JUDGE
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20 **CERTIFICATE OF SERVICE**

21 I hereby certify that on this ____ day of _____, 2001, I have caused a true
22 and correct copy of the foregoing: ----- to be served on the following counsel
by First Class U.S. Mail, postage prepaid:

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* **Recent changes to section 15 are:** "15. If the BLM Record of Decision for the Coachella Valley Multiple Species Habitat Conservation Plan Amendment (CVMSHCP) is not signed by December 31, 2002, BLM will close to vehicles and effectively block by January 1, 2003 all known routes providing unauthorized vehicle access onto the Dunn Road. In the interim, until a BLM Record of Decision for the plan is signed, BLM will, by April 1, 2002, install and maintain signs on all known roads providing access to the Dunn Road that indicate that access to the Dunn Road is prohibited. These signs will indicate "Unauthorized vehicle access prohibited ____ miles ahead". BLM will consider the closure and gating of all access roads to the Dunn Road in the alternatives considered in the CVMSHCP. For purposes of this paragraph only the parties agree that the Dunn Road is the road as described in the Federal Register of 08/28/00 (65 FR 52126). This paragraph does not alter any provisions regarding conditional access onto the Dunn Road authorized in paragraph 16 of the Revised Stipulation and Proposed Order Concerning Injunctive Relief for the Peninsular Ranges Bighorn Sheep and shall not be interpreted to further restrict such access."